

Our Reference: EMR-100-A

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Epstein, Merel

Serial Number: 09/096,946

Filing Date: June 12, 1998

Art Unit/Examiner: 3728/Jila Mohandesi

Title: BALANCING APPLIANCE FOR FOOTWEAR ITEM

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**AFFIDAVIT UNDER 37 C.F.R. 1.132**

I, Merel Epstein, the inventor of the present patent application, being first duly sworn, hereby submit the following affidavit to traverse the grounds of rejection presented in the above referenced Office Action.

1. I have over three (3) years of college training in engineering and chemistry at Wayne State University.

2. I have over twenty (20) years of experience in designing, selling, and manufacturing orthotic devices with expertise in the science of the foot and bone structure.

3. I have read and am familiar with the Office Action of June 17, 1999, in which the Examiner is now citing the Kantro reference U.S. Patent Serial No. 5,170,572 which is the new primary reference being cited by the Examiner, discloses a method for attaching cushions in specific locations to provide a tripodal support.

4. My invention is not a cushion, but rather, the insert is made of a hard, rigid material that does not compress but which retains its shape, to provide a biomechanical control for balance.

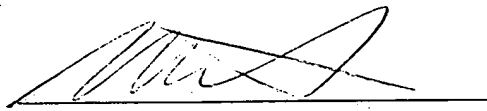
5. My invention is capable of being rotated 360° such that the foot can be balanced by the eversion or inversion of the insole, by attachment of the inserts to the insole at any necessary locations to impart balance.

6. It is understood by those skilled in the art of orthotics, that there is a difference between balancing with control and cushioning. A cushion can never impart balance, as the word "cushion" implies a collapse of the structure or a flexure of the body of the device. A cushion is used to accommodate, rather than provide control.

7. The Kantro reference, as stated above, discloses the use of cushions in specific locations to accommodate the foot, as opposed to applicant's claimed invention which provides a hard, rigid, plastic material insert that provides a biomechanical control for balance.

8. The presently claimed invention defines a circular wedge having an angle between the upper and lower surfaces thereof within the range of 2° to 6° degrees. This range provides a limitation to the angle of the wedges and is capable of imparting balance to above about 90% of all fore foot and rear foot encounters. The Kantro reference, while conceivably, disclosing a wedge-shaped circular cushion, most certainly does not disclose or even remotely suggest the 2° to 6° range of the balancing disc disclosed and claimed in my application.

Further affiant sayeth naught.

  
Merel Epstein

Subscribed and sworn to before me on  
this 8<sup>th</sup> day of July, 1999

Cynthia M. Lehnis  
Cynthia M. Lehnis, Notary Public  
Oakland County, Michigan  
My Commission Expires on 1-14-02